IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 9218 of 2004(V)

AGAINST THE ORDER DATED 10/04/2003 IN IA 40/2002 IN OS.199/2000 of PRL.M.C.,KOZHIKODE-II

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PETITIONER:

MR.PRAVEEN S/O. SANTHA,
KUNNAMANGALAM AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

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1. SANJITH 30 YEARS,
S/O. SATHYASEELAN,ULLATTITHODIKAYIL,
CHERUVANNUR P.O, KOLATHARA, KOZHIKODE TALUK.

2. SANJAYAN, 32 YEARS,
S/O. SATHYASEELAN, CHERUVANNUR AMDOM,
DESOM, ULLATTITHODIKAYIL, KOLATHARA P.O.,
KOZHIKODE.

3. MOOLYADAN MANNIL THARU VAYI KUTTY HAJI,
71 YEARS, S/O. KADAR HAJI, KUNNAMANGALAM AMSOM
DESOM, KOZHIKODE TALUK.

4. KANDAM PILAKKIL KOYA, 48 YEARS,
S/O. KOYASSANKUTTY, KANDAMPLAKIL HOUSE,
KUNNAMANGALAM POST, KOZHIKODE TALUK.

5. RATNAVATHI, 68 YEARS
D/O. GOPALAN, RETNA MAHAL - KUNNAMANGALAM POST,
KOZHIKODE TALUK.

6. PREMARAJAN, 48 YEARS,
S/O. RATNAVATHI RETNA MAHAL-KUNNAMANGALAM POST,
KOZHIKODE TALUK.

7. AJITHKUMAR, 45 YEARS S/O. RATNAVATHI
RETNA MAHAL- KUNNAMANGALAM POST,
KOZHIKODE TALUK.

8. KANNILATH POOTHAKANDY SAROJINI,
70 YEARS, W/O. GOVINDAN, KANIYATH POOTHAKANDY
HOUSE, KUNNAMANGALAM POST, KOZHIKODE TALUK.

9. SREEJAYAN, 50 YEARS, S/O. GOVINDAN,
KANIYATH POOTHAKANDY HOUSE,
KUNNAMANGALAM POST, KOZHIKODE TALUK.

10. SREEVALSAN, 48 YEARS, S/O. GOVINDAN,
KANIYATH POOTHAKANDY, KUNNAMANGALAM POST,
KOZHIKODE TALUK

11. JAYADEVAN, 40 YEARS, S/O. GOVINDAN,
"KANIYATH POOTHAKANDY" KUNNAMANGALAM POST,
KOZHIKODE DISTRICT.

12. VALSARAJAN, 48 YEARS
S/O. CHERIYAKKAN, KALICHAPRAMBIL HOUSE,
KUNNAMANGALAM POST, KOZHIKODE DISTRICT.

13. RANI, 44 YEARS W/O. BALAN,
4/57 "PRATEEKSHA", KOZHIKODE DISTRICT.

14. LATHA, 45 YEARS, W/O. BALAN,
VASISTHALAYAM, NEAR OLD RAILWAY STATION,
ERNAKULAM.

BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH
SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 9218 OF 2004

APPENDIX

PETITIONER'S EXHIHBITS:

EXT.P1 : TRUE COPY OF THE REPORT FILED BY THE FIRST COMMISSIONER SEEKING TO RETURN THE WARRANT.

EXT.P2 : TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN SUPPORT OF HIS APPLICATION FOR APPOINTING A COMMISSIONER.

EXT.P3 : TRUE COPY OF THE ORDER IN IA NO.40 OF 2002 IN OS NO.199 OF 2000 OF THE COURT OF MUNSIFF, KOZHIKODE-II.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 9218 OF 2004

Dated this the 15th day of June, 2007

JUDGMENT

In a suit for injunction, since there was dispute regarding the identity of the properties, the petitioner-plaintiff sought the appointment of an advocate commissioner. One Advocate Sri.T.N. Anu was appointed as commissioner but submitted an interim report on 20.10.2000. Through that report he sought the assistance of a surveyor since there was no visible boundaries for the property and to identify the property, assistance of a surveyor was necessary. According to the petitioner, the court considering that interim report directed the surveyor's assistance to the commissioner. But even before Sri.Anu T.N. could complete the work, he withdrew from the assignment on some personal reasons. Thereafter another advocate Sri.Rajesh George was appointed as commissioner. Sri.Rajesh George also sought for Taluk surveyor's assistance for measuring the properties. But Sri.Rajesh also could not complete the work since he shifted his practice over to Kalpetta. It is in this situation the petitioner has filed IA No.40 of 2002 seeking appointment of a fresh advocate commissioner with assistance of a Taluk Surveyor for measuring the properties and for identifying the property. That application is seen dismissed by the

impugned order Ext.P3. Before the court below only the 3rd respondent herein filed a counter affidavit and resisted IA No.40 of 2002. In this Court all respondents except 13th respondent have been served with notice. I dispense with notice to 13th respondent for the reason that 13th respondent did not have any contest to IA No.40 of 2002 and that whatever interest the 13th respondent is having in the subject matter of the suit is being safeguarded by the respondents who have been served with notice.

2. Heard Sri.Salil Narayanan, counsel for the petitioner and Sri.R. Sudheesh, counsel for the respondents. Sri.Salil Narayanan would submit that the court below having already granted assistance of the Surveyor to Sri.Anu was not justified in taking the view now that the measurement with the assistance of a Surveyor is absolutely unnecessary. The court below according to the learned counsel, has non sued the plaintiff by holding that the suit is only for injunction and the plaint schedule property need not be identified. Mr.Sudheesh would resist the submission of Sri.Salil Narayanan.

Having considered the submissions, I am of the view that the court below was not justified in dismissing the application more so since the earlier orders rendering assistance of a Surveyor to Advocate Rajesh George has not been varied by in subsequent orders. The

plaintiff cannot be blamed for non-execution of the commission warranted by Sri.Rajesh George and by Advocate Sri.Anu T.N. Both Sri.Anu and Rajesh George who had inspected the properties were of the opinion that for identifying the property correctly, assistance of a Surveyor is necessary. The learned Munsiff was not justified in taking the view that assistance of a Surveyor is not necessary was totally unwarranted. I set aside Ext.P5 and allow IA No.40 of 2002. Learned Munsiff will appoint an able advocate of his court as commissioner and render the assistance of a Taluk Surveyor to the Commissioner for executing the work as sought for in the commission application. The respondents are also permitted to submit work memos before the commissioner who will report on the aspects mentioned in the work memos also.

PIUS C. KURIAKOSE, JUDGE

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